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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/872,623	06/02/2001	Thomas T. Andersen	010.00121	2288

7590 12/30/2003
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EXAMINER

HUFF, SHEELA JITENDRA

ART UNIT PAPER NUMBER

1642

DATE MAILED: 12/30/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

5.17

Advisory Action

Application No.

09/872,623

Applicant(s)

ANDERSEN ET AL.

Examiner

Sheela J Huff

Art Unit

1642

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 25 November 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
 - (b) ☐ they raise the issue of new matter (see Note below);
 - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____

3. ☒ Applicant's reply has overcome the following rejection(s): The rejections under 102b and 102e.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☒ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☐ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: 9-12.

Claim(s) objected to: 4 and 6-8.

Claim(s) rejected: 1-3, 5.

Claim(s) withdrawn from consideration: 16-22.

8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____
10. ☐ Other: _____



Sheela J Huff
Primary Examiner
Art Unit: 1642

Continuation of 5. does NOT place the application in condition for allowance because: There are 3 ways applicant can overcome this rejection (1) show that SEQ ID No 5 is present in the provisional application, (2) a declaration under 1.132 showing that the relevant portions of the publication were originated by applicant (ie a Katz declaration) and (3) a declaration under 1.131 antedating the reference. Applicant has attempted two of these ways. First applicant re-iterates that SEQ ID NO. 5 is found in the provisional application. As stated in the final action, this sequence was not found in the provisional and if it is in the provisional, then applicant is requested to specifically point to page and line number. Second applicant submits a declaration under 1.132 to antedate the reference. A proper showing for antedating a reference is under 1.131 not 1.132. If applicant intends to rely on this, then a proper declaration under 1.131 should be submitted. Applicant has not submitted a Katz declaration, but if applicant can state in a 1.132 declaration that S. Zhu (on publication) was merely conducting research as directed one of applicants, then a Katz decl. can be submitted (see MPEP 2132.01).